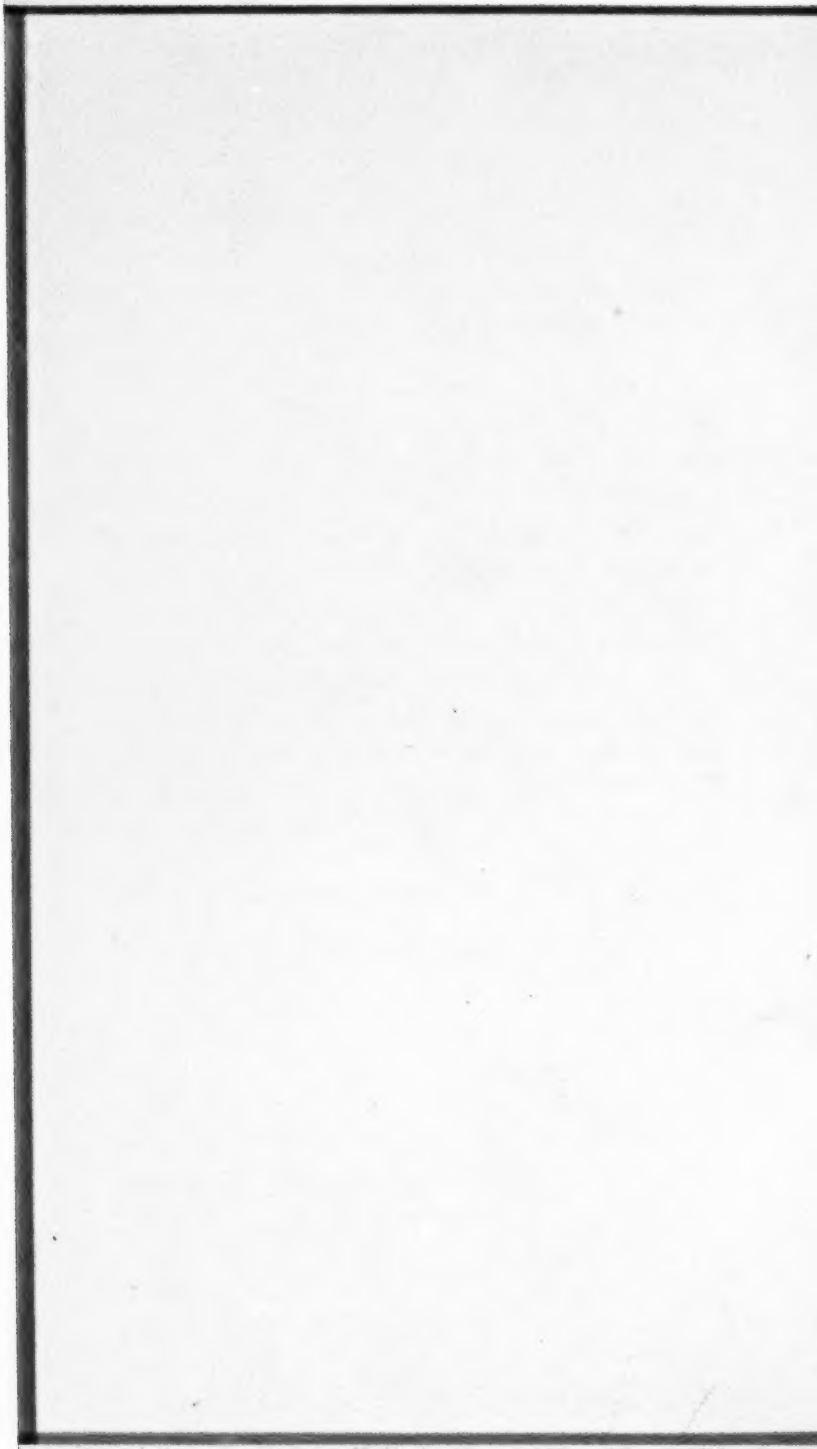

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] 264

THE FARMERS LOAN AND TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

Appeal from the Supreme Court of the State of Minnesota.

BRIEF ON BEHALF OF APPELLANT.

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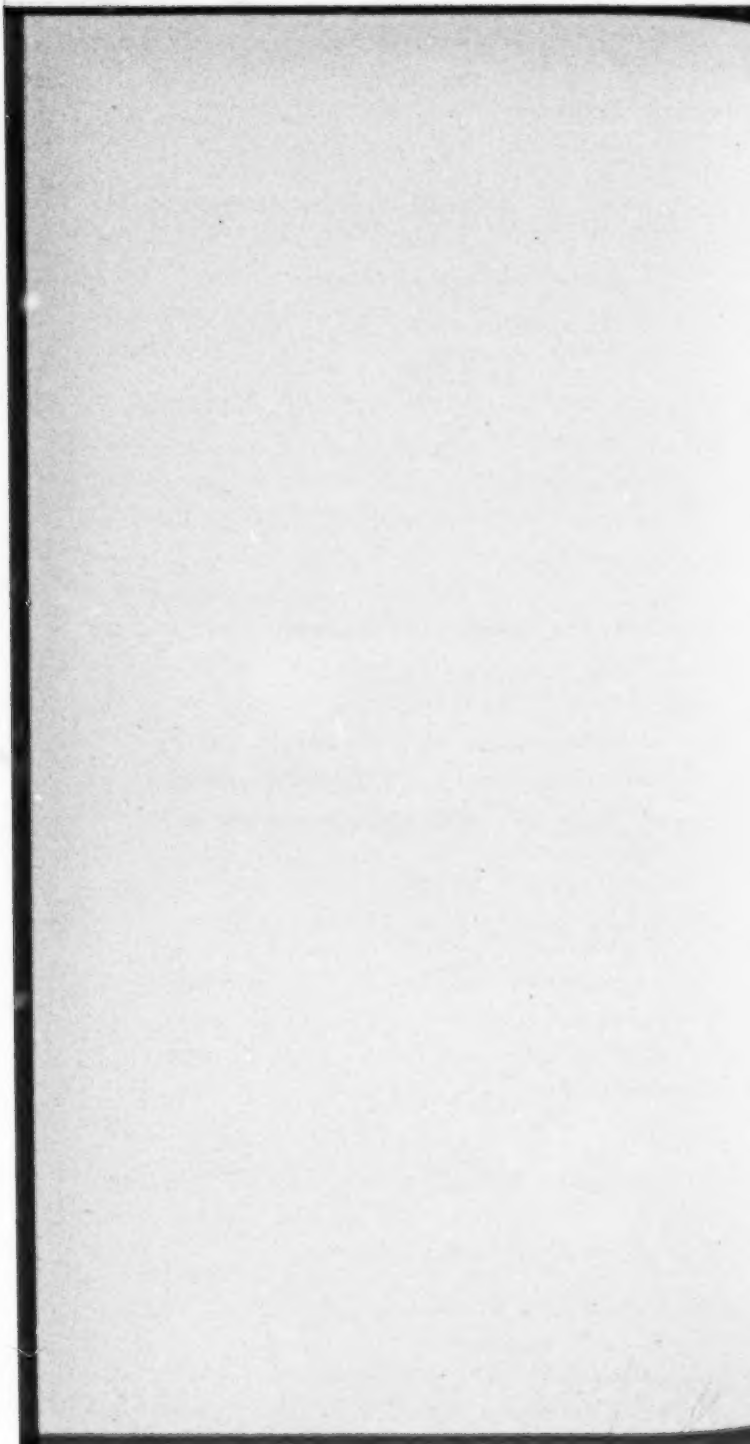

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 633.

THE FARMERS LOAN AND TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

Appeal from the Supreme Court of the State of Minnesota.

BRIEF ON BEHALF OF APPELLANT.

I.

OFFICIAL REPORTS OF OPINIONS OF THE SUPREME COURT OF MINNESOTA.

(a) Original opinion on first appeal, rendered April 13, 1928: *State v. Taylor, et al.*, 175 Minn. 310, 219 N.W. (Minn.) 153.

(b) Opinion on re-argument, rendered September 28, 1928: *State v. Taylor, et al.,* 175 Minn. 314, 221 N. W. (Minn.) 64.

(c) Opinion on second appeal, rendered December 14, 1928: *In the Matter of the Inheritance Tax on the Estate of Henry R. Taylor, Deceased,* .... Minn. .... 222 N.W. (Minn.) 528.

II.

GROUNDS FOR JURISDICTION.

For the grounds showing the basis of this Court's jurisdiction, reference is made to appellant's statement heretofore filed as required by Rule 12 of the Rules of this Court.

III.

STATEMENT OF CASE.

This appeal is from a final judgment of the Supreme Court of Minnesota (R. 69).

Appellant, a New York corporation, is the sole surviving executor of the last will of Henry R. Taylor, the co-executor having died since this case was commenced in the State courts. Mr. Taylor died testate a resident of New York on December 4, 1925 (R. 11). His will was probated and estate administered in the State of New York (R. 11). At the date of his death and for a long time prior thereto, he owned, held and kept in New York certain bonds and certificates of indebtedness of the State of Minnesota and certain bonds of the Cities of St. Paul and Minneapolis, Minnesota (R. 11,12). The place where the securities were kept and the domicile of their owner at his death, therefore, coincided.

The State of New York has imposed an inheritance tax upon the transfer of these bonds and certificates of indebtedness (R. 13, 14).

In the stipulation of facts upon which this case was tried, the several securities were divided into eight groups and described (R. 11-13, 15-36). The securities comprising groups A, B, C, and G, were registered (R. 15-23, 30-32); the remaining were payable to bearer (R. 23-29, 32-36). By the terms of each of these bonds and certificates of indebtedness both principal and interest thereof are payable at the financial or fiscal agencies of the respective debtors in New York City. Such principal and interest is payable *only* in New York in the case of the bonds included in groups B and C (R. 19, 21); payable in New York or Minnesota, at the option of the payee, in the case of the bonds and certificates of indebtedness included in groups A, D, E, G, and H (R. 15, 24, 26, 30, 33); and payable in either New York or Minnesota in the case of the bonds included in group F, with no mention of any option in the payee (R. 28). Each of the bond debtors maintained, prior to and on December 4, 1925, a financial or fiscal agency in New York City, as referred to in the several bonds and certificates (R. 13).

The State of Minnesota has by its inheritance tax law, (Sections 2292-2321, General Statutes of Minnesota 1923)* as construed and applied by the proper State officials, imposed an inheritance tax upon the transfer of these securities by the

---

*The pertinent part, for present purposes, of the Minnesota inheritance tax law reads as follows:

"A tax shall be and is hereby imposed upon the transfer of property, real, personal or mixed * * * to any person or corporation * * * in the following cases:

* * * * *

(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and decedent was a non-resident of the State at the time of his death" (§ 2292 G. S. Minn. 1923).

will of Mr. Taylor (R. 5-9). The Supreme Court of Minnesota, by its final judgment, has affirmed such construction and application of the inheritance tax law, and the imposition of the tax (R. 69-70). For a complete statement of the steps and proceedings leading to the said final judgment of the Minnesota Supreme Court, reference is made to appellant's statement filed herein pursuant to Rule 12 of the Rules of this Court.

IV.

SPECIFICATION OF ASSIGNED ERRORS RELIED UPON.

1. The said Supreme Court of Minnesota erred in holding that the State of Minnesota had any jurisdiction or power, under the Constitution of the United States, to levy or impose a tax upon the transfer by devolution of the securities involved in this case (being bonds of the cities of St. Paul and Minneapolis, Minnesota, and bonds and certificates of indebtedness of the State of Minnesota) upon the death of their owner Henry R. Taylor, a resident of the State of New York, all of which securities were actually held and kept by said Henry R. Taylor in the State of New York for a long time prior to and at the date of his death (R. 71).

2. The said Supreme Court of Minnesota erred in adjudging and deciding that the Inheritance Tax Law of Minnesota (to-wit: Sections 2292 to 2321, both inclusive, of the General Statutes of Minnesota for 1923, said sections being Chapter 288 of the Session Laws of Minnesota for 1905 as thereafter amended and modified by the Legislature of the State of Minnesota) insofar as the same is construed to apply to and im-

pose an inheritance tax upon the said transfer of said securities as above described, and the authority exercised under said law, are valid and do not deprive appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States (R. 72).

4. The said Supreme Court of Minnesota erred in affirming the order or judgment of the District Court of Minnesota for the Second Judicial District dated November 14, 1928, and in not giving to the appellant herein its rights under the Constitution of the United States as claimed and set forth in the record in this case (R. 72).

V.

ARGUMENT.

The single question presented for review is:

> Can the State of Minnesota, without violating the Fourteenth Amendment to the United States Constitution, tax the transfer by will of its own bonds and those of its municipalities, when such bonds were physically without the state and owned by a non-resident at the date of his death?

It is proper to note at the outset that this question was not decided in *Blodgett v. Silberman*, 277 U. S. 1, but was carefully left open by this Court in its opinion in that case.

(A) *State and municipal bonds are so far tangible that the State of the debtor may not tax their transfer by devolution when such bonds are owned by a nonresident at his death and kept outside of the State.*

State and municipal bonds, probably because of the high security behind them, have come to be regarded in the business word as a species of tangible property. They are bought, sold, guarded, given as security, levied on in execution, and taxed as chattels. They are not regarded in the practical world as mere evidences of indebtedness but as things of value themselves.

Partly because of this business usage and partly because of a time-honored tradition this Court has from early times and frequently recognized this class of securities, together with bank notes (and sometimes bonds generally), as tangible property for many, including taxation, purposes.

Thus in *State Tax on Foreign Held Bonds*, 15 Wall. 300, this Court said (p. 323):

> "It is undoubtedly true that the actual *situs* of personal property which has a visible and tangible existence, and not the domicile of its owner, will, in many cases, determine the State in which it may be taxed. The same thing is true of public securities consisting of State bonds and bonds of municipal bodies, and circulating notes of banking institutions; *the former, by general usage, have acquired the character of, and are treated as, property in the place where they are found, though removed from the domicile of the owner; the latter are treated and pass as money wherever they are.*" (Italics ours.)

In *New Orleans v. Stempel*, 175 U. S. 309, this Court said (p. 322):

> "It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicile of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin. * * *."

and called attention to the fact that notes and mortgages may not have become so generally recognized "as tangible personal property."

The same recognition of the tangibility of bonds, often with particular reference to State and Municipal bonds, is given in

Blackstone v. Miller, 188 U. S. 189, 206;

Buck v. Beach, 206 U. S. 392, 407;

Wheeler v. Sohmer, 233 U. S. 434, 439, 445;

De Ganay v. Lederer, 250 U. S. 376, 381;

Maguire v. Trefry, 253 U. S. 12, 15.

Appellant does not claim that State and municipal bonds are necessarily to be *completely* assimilated to tangible per-

sonal property for every purpose; but it does assert that they are so far tangible that if they and their transfer by devolution are taxable anywhere else than at the domicile of their owner, it is *only* at the place where such bonds actually are. This we understand from its decisions is the view of this Court.

In *State Tax on Foreign Held Bonds, supra,* a Pennsylvania law requiring a railroad company which issued bonds to pay a state tax upon those bonds (or perhaps upon the interest therefrom) and to deduct such tax from the interest due was declared unconstitutional when applied to bonds owned by non-residents and kept outside the State, *upon the distinct ground that the tax law was an attempt by Pennsylvania to reach property beyond its jurisdiction.* This Court said (p. 325):

> "We are clear that the tax cannot be sustained; *that the bonds being held by nonresidents of the State, are only property in their hands, and that they are thus beyond the jurisdiction of the taxing power of the State*". (Italics ours.)

A fortiori the same holding would have been made with respect to state and municipal bonds similarly held, for the Court had just referred to the peculiarly tangible character of such securities (p. 324).

It is quite true that this Court in the *Foreign Held Bonds* case also found that the law impaired the obligation of contracts, but that holding, as we read the decision, was only with respect to the statutory provision for the retention of interest by the bond debtor to pay the tax. In the two cases decided with and at the same time as the *Foreign Held Bonds* case and briefly reported in 15 Wall. 326-329, the tax was "upon the bonds * * * to be paid out of the interest," but, unlike

the situation in the *Foreign Held Bonds* case itself, the tax law was passed before the bonds were issued. In these two cases, therefore, the question of the impairment of the obligation of contract was not present at all. Yet this Court held that tax law unconstitutional upon the authority of the *Foreign Held Bonds* case, stating that "the difference in the mode of assessment of the tax did not affect the principle decided." So we assert that the *Foreign Held Bonds* case did decide unequivocally that a state is without power to tax bonds of its corporations when they are owned by a nonresident and kept outside the state, *for the reason that they are property without that state's jurisdiction.*

It is for this last proposition that the case has been cited and approved by this Court. In *New Orleans v. Stempel, supra*, this Court said (p. 319):

> "In *State Tax on Foreign Held Bonds*, 15 Wall. 300, *it was held* that while the taxing power of the State may extend to property within its territorial limits, it cannot to that which is outside those limits, and therefore *that bonds issued by a railroad company, although secured by a mortgage on property within the State, were not subject to taxation while in the possession of their owners who were non-residents.*" (Italics ours.)

Then this Court made it clear that the further question in the *Foreign Held Bonds* case, as to impairment of the obligation of contracts, arose by reason of the provision for withholding interest to pay the tax, by saying (p. 320):

> "It was held in that case that a statute requiring the railroad company, the obligor in such bonds, to pay the state tax, *and authorizing it to deduct the amount of such taxation from the interest due by the terms of the bond,* was as to non-residents a law impairing the obligation of contracts." (Italics ours.)

In *Blackstone v. Miller,* 188 U. S. 189, this Court said with reference to the *Foreign Held Bonds* case (p. 206):

> "Therefore, considering only the place of the property, it was held that bonds held out of the State could not be reached."

The *Foreign Held Bonds* decision has, so far as we can ascertain, never been criticised by this Court except in the case of *Savings and Loan Society v. Multnomah County,* 169 U. S. 421, wherein a dictum in the earlier case regarding the taxation of mortgaged lands was disapproved. In *Buck v. Beach, supra,* this Court said (p. 408):

> "Although the language of the opinion in the case of *State Tax on Foreign Held Bonds, supra,* has been somewhat restricted so far as regards the character of the interest of the mortgagee in the land mortgaged, *Savings &c. Society v. Multnomah County,* 169 U. S. 421, 428, *the principle upon which the case itself was decided has not been otherwise shaken by the later cases.*" (Italics ours.)

It is of course true, as this Court has said in *Blodgett v. Silberman, supra,* that the *Foreign Held Bonds* case is not authority for the proposition "that such bonds are to be completely assimilated to tangible personal property." The question of *complete* assimilation was not there involved. But we submit that the *Foreign Held Bonds* case is authority for the proposition that bonds, particularly State and municipal bonds, are so far assimilated to tangible personal property that they cannot be taxed at the State of the domicile of the bond debtor unless perchance the bonds themselves or the domicile of their owner are there.

On principle as well as authority the proposition for which we contend is sound. The problem of situs for taxation purposes should be treated in a practical rather than a technical

way. When the business world regards State and municipal bonds as things of value to be passed from hand to hand, every reason should impel the fixing of the situs of such securities for taxation purposes in the place where they are, except so far as the maxim *mobilia sequuntur personam* is applicable. In the present case we are not concerned with the exception since the bonds in question were in fact kept by Mr. Taylor in New York, the State of his domicile. The added fact may be noted that these bonds and the interest thereon were payable in New York. Under all these circumstances the sole tax situs of the bonds was New York.

Thus far we have dealt chiefly with Minnesota's right to impose a property tax upon the public bonds kept by Mr. Taylor in New York. The present case is an inheritance and not a property tax case. But it is now definitely settled that if a State is without power to impose a tax on property, by the same token it is without power to impose a tax upon the transfer of that property. In *Rhode Island Trust Co. v. Doughton*, 270 U. S. 69, this Court, after pointing out that a State may not tax property not within its territorial jurisdiction, said (p 80):

> "The tax here is not upon property, but upon the right of succession to property, but the principle that the subject to be taxed must be within the jurisdiction of the State applies as well in the case of a transfer tax as in that of a property tax. *A state has no power to tax the devolution of the property of a non-resident unless it has jurisdiction of the property devolved or transferred.*" (Italics ours.)

We take it as significant that this Court in illustrating this principle stated (p. 81) that in the case of intangibles like choses in action, shares of stock, *and bonds*, the situs of which

is with the owner, a transfer tax may be properly levied by the State in which he resides; but that when it considered which of these classes of property might be taxed by the State in which the corporation is organized, it mentioned *only* shares of stock, omitting all reference to bonds.

There is nothing in the decision or in the reasoning of the opinion in *Blodgett v. Silberman, supra,* inconsistent with appellant's position here. In that case it was held that the maxim *mobilia sequuntur personam* is applicable to United States bonds and treasury certificates even when those securities are outside the taxing State. This Court pointed out that this maxim is so deeply rooted as applied to this class of property that it must be accepted "whether it approve itself to legal philosophic test or not." (p. 10). But the extent of the power of the owner's domicile to tax bonds is not the question in the present case. Mr. Taylor's domicile and the place where his bonds were kept coincided and were not in Minnesota. The *Silberman* decision left the present question untouched (p. 10).

In the *Silberman* case this Court held that the transfer of certain bank notes owned by Mr. Hirsch (a Connecticut resident) but kept in New York at the date of his death was *not* taxable by Connecticut. It would thus appear that bank notes are so "completely assimilated to tangible personal property" that even the maxim *mobilia sequuntur personam* does not apply for taxation purposes as to them. Yet bank notes in substance do not differ from other promises to pay. This Court has said with reference to bills and notes in *Wheeler v. Sohmer, supra,* (p. 439):

> "It is true that in some cases there may be a recovery without producing and surrendering the paper, *but so may there be upon a bond in modern times.* It is not primitive tradition alone that gives their peculiarities to bonds, but

> a tradition laid hold of, modified and adapted to the convenience and understanding of business men. The same convenience and understanding apply to bills and notes, as no one would doubt in the case of bank notes, *which technically do not differ from others.*" (Italics ours.)

In the absence of statutory provisions to the contrary, bank notes may be physically destroyed and yet the debts remain and are recoverable.

Hagerstown Bank v. Adams Express Co., 45 Pa. St. 419, 429;

Robinson v. Bank of Darien, 18 Georgia 65, 111;

Wade v. New Orleans Canal Co., 8 Robinson (La.) 140;

Bank of Louisville v. Summers, 14 Monroe (Ky.) 306.

It is business usage that has given to bank notes their completely tangible characteristic.

We of course need not, for present purposes, argue that State and municipal bonds are to be regarded as tangible for all purposes, as apparently are bank notes. However, we may note in passing that historically such bonds and bank notes have from earliest times been classed together as a species of tangible property. (See cases cited on page 7 of this brief). What we do argue is that this Court's treatment of bank notes in the *Silberman* case indicates that there are degrees of tangibility; and that simply because public bonds and securities are not completely tangible so as to make the maxim *mobilia sequuntur personam* inapplicable does not at all mean that they are not so far tangible as to prevent the State of the bond debtors from taxing them or their transfer when they are owned by nonresidents and kept without the State.

Numerous State court decisions have involved substantially the question now presented and fully support appellant's position here.

In re Bronson, 44 N. E. (N. Y.) 707;
In re Fearing, 93 N. E. (N. Y.) 956;
In re Lowell, 203 N. Y. S. 312, affirmed in 147 N. E. (N. Y.) 183;
Walker v. People, 171 Pac. (Colo.) 747;
McLaughlin v. Cluff, 240 Pac. (Utah) 161;
Commonwealth v. Huntington, 138 S. E. (Va.) 650.

The *McLaughlin* and *Huntington* decisions are based primarily upon the construction of statutes but both review extensively the authorities.

The securities included in groups A, B, C and G of the stipulation of facts (R. 15-23, 30-32) are registered. In the State courts respondent urged that the fact of registration so distinguishes these securities from the others that *their* transfer at least is subject to the Minnesota Inheritance Tax.

Registration of securities does not lessen their tangibility. They are still negotiable and may readily pass from hand to hand outside the state. *Fletcher* in his *Work on Corporations*, Section 1010, says:

> "* * * and it has well been said by a prominent textbook writer that such a bond is as negotiable as a bearer bond and that 'the difference is rather in the method of the negotiability. As a bill or note payable to order is negotiable, so is a registered bond or debenture. * * *'"

In *Kelly v. Bell*, 83 N. E. (Ind.) 773, it was held that in order to convey legal title to registered bonds it is not necessary that the bonds be surrendered and new ones taken but that a proper endorsement and delivery is sufficient.

Had Mr. Taylor during his lifetime desired to transfer one of these registered bonds he would have executed an assign-

ment of it and his rights thereunder and delivered the bond and assignment to the assignee. Such assignee could either send the bond in and have it registered in his own name or before such registration he could assign it to still another party. There might have been several such assignments and transfers before further registration was had. Likewise Mr. Taylor could have made an assignment of the bond to bearer or in blank and the instrument might then have passed from hand to hand many times before it was actually registered to bearer or to the holder who finally filled in the blank with his name. Registration is primarily for the protection of the holder of the bond. It is simply a clerical act. It is not left to the bond debtor to determine for itself whether it wishes to recognize as the owner of the bond the person to whom it has been assigned by the registered holder. Suppose the assignee of one of the bonds here involved should send it in for registration but the State or municipal authorities arbitrarily declined to register it. In such a case there can be no doubt that the State or municipality would not be protected in paying the interest or principal to the former owner whose name appeared as registered holder. It is true that the assignee in such a case if he wishes to compel registration might have to come to Minnesota and by mandamus proceedings or otherwise force the State or municipal authorities to register the bond in his name. But the registration itself would be no part of the enforcement of the obligation to pay. Indeed it would give the bondholder no greater protection as against the bond debtor than would simple notice to it of his rights.

If we are correct in our contention that State and municipal *bearer* bonds physically outside the State of the bond debtor and owned by a non-resident are without the jurisdiction of that State for property tax and inheritance tax purposes, then

it must be true that the bare fact of their registration would not give the State power to tax those instruments or their transfer.

Suppose a Minnesota municipality for some reason chose to have its sole registration and transfer agent in the State of Delaware, can it be that Delaware would thereby acquire jurisdiction by reason of that fact alone to impose a tax upon its bonds or upon their transfer by devolution? We do not find any case in which this contention has been made. If Delaware in such a case would not have the power neither would that power be given to Minnesota in the present case by reason of the single fact that the bonds are registered.

We have found only one case, *Bliss v. Bliss,* 109 N. E. (Mass.) 148, that has made any distinction between bearer and registered bonds so far as the question of taxation is concerned. In that case the Court strongly intimated that it thought that Massachusetts could not tax the transfer of its own bearer bonds held outside the State and owned by a nonresident at the date of his death, but it felt that a different rule would apply to the transfer of registered bonds so held and owned. We cannot believe that the controlling effect which the Massachusetts Court gave to the bare fact of registration will commend itself to this Court. The decision of the Appellate Division of New York, First Department, *In re Lowell,* 203 N. Y. S. 312, involving registered bonds is diametrically opposed to the *Bliss Case.*

We therefore submit that the bonds in the present case, both bearer and registered, because of their tangible characteristics were property beyond the jurisdiction of Minnesota and that the atttempt of that State to impose a tax upon their transfer by will was in violation of the Fourteenth Amendment to the Federal Constitution.

(B). *Wholly apart from the tangibility of the securities, the debts due decedent from Minnesota and its municipalities did not have a situs in Minnesota so as to permit that State's imposing an inheritance tax upon their transfer by will.*

Under point (A) we have stressed the tangible character of the State and municipal bonds upon the transfer of which Minnesota seeks to impose an inheritance tax. We now turn to another aspect of the question. Entirely apart from their tangible quality and regarding the bonds for present purposes as mere evidence of debt, we contend that still Minnesota is without power to tax their transfer.

So far as we can ascertain it has never been held by this Court that the domicile of a debtor in a State, without more, will give to that State the power to tax a debt owed to a non-resident.

In the absence of special circumstances, the situs of a debt for taxation purposes is the domicile of the creditor and only there. This Court has said in *Kirtland v. Hotchkiss,* 100 U. S. 491, 498, 499 (recently quoted with approval in *Blodgett v. Silberman, supra*):

> "That debt, although a species of intangible property, may for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. * * * The debt, then, having its *situs* at the creditor's residence, both he and it are, for the purposes of taxation, within the jurisdiction of the State."

And in the case of *State Tax on Foreign Held Bonds, supra,* it was said (320):

> "All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. *Their debts can have no locality separate from the parties to whom they are due.*" (Italics ours).

Twenty-five years later (in 1907) this Court in *Buck v. Beach, supra,* (p. 407) quoted the foregoing language and gave it its unqualified approval.

Again in *Murray v. Charleston*, 96 U. S. 432, 440, this Court, speaking with reference to bonds (called certificates of stock) of the City of Charleston, South Carolina, which were owned by a non-resident, said:

> "Debts are not property. A non-resident creditor cannot be said to be, in virtue of a debt due to him, a holder of property within the City * * *."

There appear to be only two exceptions to this long established rule, viz:

(1) When the debt is evidenced by a bond or other instrument which itself has come to be regarded as tangible property and is separated from the creditor's domicile.

(2) When the creditor has given the debt a "business situs" in some jurisdiction other than his domicile, usually resulting from the debt's growing out of business carried on in that other jurisdiction.

The first exception is illustrated by some of the cases cited under point (A) *supra*. The present case does not fall within this exception, since the securities were not kept in Minnesota, but in New York where Mr. Taylor lived.

The second exception has found application in:

New Orleans v. Stemple, 175 U. S. 309;
Bristol v. Washington County, 177 U. S. 133;
Board of Assessors v. Comptoir National, 191 U. S. 388;
Metropolitan Life Insurance Co. v. New Orleans, 205 U. S. 395;

Liverpool, etc., Insurance Co. v. Board of Assessors, 221 U. S. 346;

Orient Insurance Co. v. Assessors, 221 U. S. 358.

In none of the foregoing cases is there a suggestion that the domicile of the debtor *per se* fixes the situs of the debt for taxation purposes. On the contrary the thought running through all these decisions is that the tax situs of a debt is at the creditor's domicile, unless the creditor has by his conduct of business given it a situs elsewhere; and in each case this Court stresses the circumstances which have caused the situs to be fixed elsewhere than the creditor's domicile.

In the *Stemple* case the assessed credits were evidenced by notes secured by mortgage on New Orleans real estate. The notes and mortgage were in the possession of an agent in New Orleans who collected the proceeds and interest and deposited it in a bank in that city for the creditor who was domiciled in New York. The decision that these credits could be taxed in Louisiana was based partly upon the fact that they had been given a business situs there and partly upon the fact that the notes and mortgages (which the Court held Louisiana might and did treat as tangibles, like bank bills and municipal bonds) were there.

In the *Bristol* case it was held that notes of Minnesota residents, owned by a New York citizen, but payable at the office of agents in Minnesota, where the mortgages securing the notes were retained by the agents, and the notes were returned from time to time when required for renewal, collection or foreclosure, the agents collecting the money and making loans in the name of the principal, were property taxable in Minnesota. This Court quoted without disapproval the language of the

Minnesota Supreme Court in *In re Jefferson,* 35 Minn. 215, 220:

> *"A credit, which cannot be regarded as situated in a place merely because the debtor resides there,* must usually be considered as having its *situs* where it is owned,—at the domicile of the creditor. The creditor, however, may give it a business *situs* elsewhere; as where he places it in the hands of an agent for collection or renewal, with a view to reloaning the money and keeping it invested as a permanent business." (Italics ours.)

In the *Comptoir National* case a foreign banking company did business in New Orleans and there made loans through a local agent, on collateral security, the customer drawing his check which was treated as an overdraft and held as a memorandum of indebtedness. These debts, when paid, created a fund in the hands of the agent subject to loan and reinvestment by him without consultation with the principal. In holding these credits taxable in Louisiana, this Court said after reviewing the authorities (p. 403):

> "From these cases it may be taken as the settled law of this court that there is no inhibition in the Federal Constitution against the right of the State to tax property in the shape of credits *where the same are evidenced by notes or obligations held within the State, in the hands of an agent of the owner for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a permanent business."* (Italics ours.)

In the *Metropolitan Life Insurance Company* case, loans were made in Louisiana through the local agent of the insurance company, a New York corporation doing business in Louisiana, to its policy holders upon the security of their policies. Upon the approval of a loan at the company's home office its agent in Louisiana would procure the note to be

signed and forward it and the policy to the home office. The agent collected and transmitted the interest, and also collected the principal when due and upon payment delivered the notes back to the makers. These credits were held to have been given a tax situs in Louisiana, this Court saying (p. 402):

> "We are not dealing here merely with a single credit or a series of separate credits, but with a business. The insurance company chose to enter into the business of lending money within the State of Louisiana, and employed a local agent to conduct that business. It was conducted under the laws of the State. The State undertoook to tax the capital employed in the business precisely as it taxed the capital of its own citizens in like situation. For the purpose of arriving at the amount of capital actually employed, it caused the credits arising out of the business to be assessed. We think the State had the power to do this, and that the foreigner doing business cannot escape taxation upon his capital by removing temporarily from the State evidences of credits in the form of notes. Under such circumstances, they have a taxable situs in the State of their origin."

The case was said to be indistinguishable from the *Bristol* case, supra.

In the *Liverpool, etc., Insurance Co.* case, Louisiana taxed amounts due from its residents to a foreign insurance company for premiums on which credit had been extended. This Court stressed the fact that (p. 353) "the indebtedness had its origin in the course of business transacted * * * in Louisiana" and that it arose (p. 357) "in local business." The state court's decision was quoted (p. 349) from which it appeared that the credits *were due in Louisiana*. This Court

held that credits (p. 354) "arising as did those in the present case" could be taxed in Louisiana.

Lastly, in the *Orient Insurance Company* case in holding that premiums on insurance policies due on open account from residents of Louisiana to foreign insurance companies might be taxed by that state, this Court said (p. 360):

> "The premiums were the consideration for the insurance contracts, *they were the returns from the local business.*" (Italics ours.)

From these decisions we think it is manifest that a simple debt can have no situs for taxation purposes apart from the domicile of the creditor unless it be given a "business situs" elsewhere; and that "business situs" depends upon something more than the mere domicile of the debtor. Such "business situs" may result when the debts arise from a course of business conducted in a particular state (e. g. when a fund is kept in the state and invested and reinvested there) and is payable in that state.

Clearly the debts in the present case were not given a "business situs" in Minnesota. Mr. Taylor transacted no business there out of which the debts arose. He had no money in Minnesota which he was investing and reinvesting there. The debts themselves were all payable in New York, some being payable *only* there and some in New York or Minnesota at the option of the payee (R. 15, 19, 21, 24, 26, 28, 30); and prior to and at the date of Mr. Taylor's death each of the debtors maintained for such payment financial or fiscal agencies in New York as provided in the several securities here involved (R. 13).

We submit, therefore, that the debts owed by Minnesota and its municipalities, even regarded as simple debts, had no

situs in Minnesota so that that State could impose a property tax upon them. If this is true, then under the principle laid down in *Rhode Island Trust Company v. Doughton, supra,* neither did Minnesota have power to impose a tax upon their transfer at Mr. Taylor's death.

In the State Courts respondent rested heavily upon the decision of this Court in *Blackstone v. Miller, supra.* The first and complete answer to respondent's use of the *Blackstone* case as an authority for it in the present case, is that this Court, with great care, expressly excepted bonds from the doctrine there laid down and said (206):

> *"There is no conflict between our views and the point decided in the case reported under the name of State Tax on Foreign Held Bonds,* 15 Wall. 300. The taxation in that case was on the interest on bonds held out of the State. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. *Bacon v. Hooker,* 177 Massachusetts, 335 337. *Therefore, considering only the place of the property, it was held that bonds held out of the State could not be reached."* (Italics ours).

In the *Blackstone* case this Court did not distinguish the *Foreign Held Bonds* case upon the ground that it involved a property tax whereas the *Blackstone* case involved an inheritance tax but rather upon the ground that bonds are tangible in their character. Thus this Court negatived any idea that the decision in the *Blackstone* case is to be taken as an authority that a State may impose an inheritance tax upon the transfer of bonds owned and held without the State by a nonresident, though it may not impose a property tax upon the bonds themselves.

The *Blackstone* case dealt solely with the question of the right of New York to tax money deposited in a New York bank by a nonresident. The comparatively small debt due from a firm mentioned in the early part of the opinion was not considered for this Court stated on page 203 that the question was "whether the State had a right to tax the transfer by will of such deposit." Respecting this deposit this Court pointed out the practical similarity between money in the bank and actual coin, intimating strongly that its decision might have been based upon that ground.

Furthermore, the deposit in the *Blackstone* case was payable to the testator's order and might have been withdrawn on five days' notice and was in the meantime drawing interest. The fund had been in the bank for over a year and this Court points out that the testator probably was looking out for investments. On these facts it may well be said that that deposit or debt had in fact been given a business situs in New York.

In view of the limited question actually decided in the *Blackstone* case it seems fair to question whether this Court would hold that a State could tax the transfer of a simple debt due from one of its residents to a nonresident (that debt not being a bank deposit and not having been given a business situs in the State) upon the theory that it had power over the person of the debtor. The arguments against such an application of the theory are set forth in an article by Professor Beale in 32 Harvard Law Review, 600-605. But, be this as it may, that question cannot seriously concern appellant here since this Court, as we have pointed out, excepts cases like the present one from the doctrine of the *Blackstone* case.

(C) *Conclusion.*

The recent decisions of this Court disclose, we believe, a definite tendency to draw away from any theoretical conceptions respecting situs of property for taxation purposes which have the anomalous and unjust results of localizing property in more than one place at one time. In *Union Transit Company v. Kentucky*, 199 U. S. 194, the situs of tangible property for *property* tax purposes was held to be the place where the property is in fact and nowhere else. In *Frick v. Pennsylvania*, 268 U. S. 473, the same holding was made with respect to the situs of physical personal property for *inheritance* tax purposes, though this holding was contrary to an earlier dictum of this Court (*Blackstone v. Miller*, 188 U. S. 189, 204) and probably to the then general understanding and practice of State taxing authorities. Reason and justice require that one situs, and not several, be given to all property, whether tangible or intangible.

The case of *Blodgett v. Silberman*, *supra*, establishes that, because of the deeply rooted maxim *mobilia sequuntur personam*, public securities must still be regarded as having a tax situs at the domicile of their owner, no matter where the securities themselves are. In view of this decision, it might indeed be well if the owner's domicile were held to be their single situs irrespective of all other circumstances. But certainly if they are to be given any additional situs it should be only in the state where the securities are in fact kept, since in the business world such securities are universally treated and dealt with as tangible property. We submit that under no proper theory should such property be held to have still a *third* tax situs in the state of the debtor, solely by reason of the fact that the bond debtor resides there. In our case, as

has been pointed out, the place of the bonds and the domicile of their owner were in the same state, viz., New York. Under such circumstances New York is the single situs of these bonds for either property or inheritance tax purposes, and in the present estate New York has properly availed itself of its power by taxing their transfer (R. 13).

We submit, therefore, that the Minnesota inheritance tax law as construed and applied with respect to the transfer of the bonds here involved, the authority exercised under said law in imposing an inheritance tax upon that transfer, and the tax itself are a taking of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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